

**REMARKS**

In the Office Action of May 17, 2005,<sup>1</sup> claims 1-18 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1-9, 12, and 15 of copending Application No. 09/832,339. Claims 1-18 are pending in this application.


Although disagreeing with the obviousness-type double patenting rejection, in an effort to advance prosecution, Applicant files a Terminal Disclaimer<sup>2</sup> concurrently with this paper, obviating the sole outstanding rejection. Applicant requests reconsideration of this application in view of the attached Terminal Disclaimer, withdrawal of the obviousness-type double patenting rejection, and the timely allowance of pending claims 1-18.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

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By:   
Frank A. Italiano  
Reg. No. 53,056

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<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

<sup>2</sup> Applicant points out that: "[t]he filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection." M.P.E.P. § 804.02(II), 8<sup>th</sup> Ed., Aug. 2001, p. 800-32 (citing *Quad Environmental Tech. Corp. v. Union Sanitary Dist.*, 946 F.2d 870 (Fed. Cir. 1991)). As M.P.E.P. § 804.02(II) indicates, "[t]he Court indicated that the 'filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.'" *Id.*